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COMMERCIAL TIME ON CHILDREN'S CABLE TV

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

COMMERCIAL TIME LIMITS FOR CHILDREN'S TELEVISION PROGRAMMING ON CABLE

OCTOBER 18, 1989

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TIME LIMITS FOR CHILDREN'S PROGRAMS ON CABLE TV

WEDNESDAY, OCTOBER 18, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m. in Room SR-253, Russell Senate Office Building, Hon. Albert Gore, Jr., presiding.

Staff members assigned to this hearing: Toni Cook and Tom Cohen, staff counsels; and Gina Keeney, minority staff counsel.

OPENING STATEMENT BY SENATOR GORE

Senator GORE. The committee will come to order. The subcommittee will come to order.

I would like to welcome all of our witnesses today.

The purpose of today's hearing—and let me note at the outset that Chairman Inouye had intended to be here to conduct this hearing himself, but is a little bit under the weather this morning and asked me to chair in his stead.

The purpose of our hearing is to consider Senator Danforth's proposal to amend the Children's Television Act of 1989, which this committee just reported, by extending the commercial time limits provision in that bill to children's programming carried on cable television.

This amendment was introduced during a mark-up and was temporarily set aside because we felt we needed to develop a sufficient record.

The Children's Television Act of 1989 limits the amount of commercial time during children's programming on broadcast stations. Senator Danforth has argued, I believe persuasively, that children do not turn on broadcast stations or cable systems. They just turn on the television set, and that's why he proposes to apply these commercial time limits to cable system.

Many who were not prepared to vote for his amendment during the mark-up were nevertheless persuaded by the logic of his presentation and simply wanted to receive more information about the differing legal approaches that the government has to broadcasting and to cable.

In that regard we will hear from Brian L. Wilcox today, Director of the Office of Public Interest Legislation, with the American Psychological Association, Geraldine B. Laybourne, President of Nick-

elodeon and Nick-at-Night, and John Hendricks, Chairman and CEO, of The Discovery Channel.

I think we are in agreement that children are special, not only as consumers, but as individuals with special needs. The marketplace cannot always be counted upon to protect their interests.

The Children's Television Act seeks to rectify some of the FCC's prior unwillingness to monitor the runaway behavior of some program producers and broadcasters who would exploit the children's television market. Senator Danforth's amendment to extend these protections is the subject of our hearing his morning.

I might just add that as cable grows in dominance, not only in programming and audience share, but as the technical bottleneck into the homes of consumers, we have to decide whether or not the Congress should stand idly by and assume that the marketplace will automatically resolve all of the problems facing communities and families, as a result, especially those with little or no choice.

Now, it is my honor to recognize our ranking Republican member and the author of today's subject matter, Senator Danforth.

Senator DANFORTH. Mr. Chairman, you have ably stated the issue, and I have nothing further to add at this time.

Senator GORE. Senator Burns.

OPENING STATEMENT BY SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman. I just want to thank you and Senator Inouye for holding these hearings. You know, you get the feeling whenever you go into a subject matter such as this that we are sort of going into sacred waters, so to speak, and I really appreciate and congratulate Senator Danforth for offering this amendment.

Government cannot be the overriding factor on what we see on television and what is broadcast and all these things, and sometimes there has to come some sort of responsibility from not only the broadcaster, but the programmer and, of course, parents themselves about what they will allow their children to see on this medium.

So, as a former broadcaster, I know about the freedom of broadcasting and how important it is to broadcasters. Nonetheless, we are addressing this, and it is not a cure-all and cannot be a cure-all, but it may be a step in the right direction.

I realize other items on the Committee agenda were postponed in order to hold this hearing on children's programming in cable television and I appreciate the cooperation on behalf of the leadership to make this possible.

It has come to the attention of the members of this committee that there may be additional issues and concerns in the area of children's television as it applies to cable. I would also like to take this time to congratulate Senator Danforth for offering his amendment. I think it is important that we investigate these issues before we make any final decisions on the legislation before us.

As a former broadcaster, I am aware of broadcasters' obligation to serve the public interest and the special problems that arise when the government attempts to target a specific audience. With

regard to children's television, there may be certain obligations that Congress can appropriately apply to broadcasters that should not apply to cable operators. There may be obligations that should apply to both industries. Conversely, there may be regulations for cable that should not apply to broadcasters.

For example, at the last Commerce Committee Executive Session, I voiced my concern over the content of cable's MTV. To my knowledge, there are no special regulations that govern MTV's programming decisions. Maybe there should be. Many of its videos tend to be rather graphic in nature and are readily available to children at all hours. It may be appropriate to examine these issues today, or at some future hearing.

At this juncture, however, we clearly must evaluate whether the advertising regulations we have just imposed upon broadcasters also should apply to cable operators. In addition, should Congress mandate more children's programming on cable as we would do with television stations? These are important questions that we as legislators need to investigate further before we pursue legislative action. I hope this morning's witnesses will provide some insight as to what action we should take.

Again, Mr. Chairman, I appreciate the courtesy you've extended in holding this hearing this morning and I look forward to working with you on this matter.

Senator GORE. Thank you.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman, I have no statement.

Senator GORE. I have opening statements from the Chairman, Senator Hollings and also Senator Inouye that I will include in the record.

[The statements follow:]

OPENING STATEMENT BY THE CHAIRMAN

American children spend more time watching television than any activity other than sleep. In addition, it is well documented that children under certain ages, unlike adults, are not capable of distinguishing programs from commercials. Thus, television has the ability to significantly influence our children's development. It is for these reasons that the Committee reported out the Children's Television Act of 1989, which will limit the amount of time that children are exposed to commercial matter and improve the quality and quantity of programming available on commercial television.

Today we are here to consider extending the restrictions on commercial matter during children's programs broadcast on over-the-air television to children's programming carried on cable. It is clear that our children, like their parents, are spending more and more time watching cable programming. Consequently, I believe that Senator Danforth's proposal is a good one.

OPENING STATEMENT BY SENATOR INOUYE

The purpose of today's hearing is to consider Senator Danforth's proposal to amend the Children's Television Act of 1989, which this Committee just reported, by extending the commercial time limits provision to children's programming carried on cable television. The amendment was set aside during the last Committee mark-up because we needed to develop a sufficient record.

The Children's Television Act of 1989 limits the amount of commercial time during children's programming on broadcast stations. Senator Danforth has asserted that children do not turn on broadcast stations or cable systems—just the television set. That is why he proposes to apply these commercial time limits to cable

systems. His proposal makes good sense and I look forward to the views of today's witnesses.

We will hear from Brian L. Wilcox, Director, Office of Public Interest Legislation, American Psychological Association, Geraldine B. Laybourne, President, Nickelodeon/Nick-at-Night, and John Hendricks, Chairman and CEO, The Discovery Channel.

I want to thank each of the witnesses for taking the time to testify today. I look forward to hearing from you.

Senator GORE. Let me invite our witnesses to come forward at this time, Brian Wilcox, Geraldine Laybourne, and John Hendricks. We are delighted that each one of you was able to join us on relatively short notice, and we appreciate your prepared statements. And without objection, the entire text of your prepared statements will be included in the record in full.

We invite you to summarize your presentation and get to the heart of it in the oral presentation. I think we will start, Dr. Wilcox, with you.

Brian Wilcox is Director of the Office of Public Interest Legislation with the American Psychological Association, and we are delighted to have you here, Dr. Wilcox. Please proceed.

STATEMENT OF DR. BRIAN L. WILCOX, DIRECTOR, OFFICE OF PUBLIC INTEREST LEGISLATION, AMERICAN PSYCHOLOGICAL ASSOCIATION

Dr. WILCOX. Thank you, Senator Gore. It is a pleasure to be here.

I am pleased to speak with you today on the issue of advertising limits for children's programming on cable television.

First, I would like to extend my commendations to the subcommittee, especially its chairman, for providing leadership aimed at improving the quality and availability of children's television programming.

The legislation that was recently passed by the subcommittee would reinstate limits, restrictions on the number of minutes of advertising broadcast during children's programming. During the mark-up of this legislation Senator Danforth proposed an amendment which would apply these same limits, 10½ minutes per hour on weekends and 12 minutes per hour on weekdays to cable programming for children.

Senator Danforth suggested that the logic of limiting advertising during broadcast programming should apply in a straightforward fashion to cable programming. I agree completely.

Let me briefly review the rationale for limiting advertising directed at children. In testimony before the subcommittee and the House Subcommittee on Telecommunications and Finance as well as in comments to the FCC, APA has argued that there is extensive convincing evidence documenting young children's inherent vulnerability to commercial persuasion. This research has been reviewed and summarized by the National Science Foundation and the Federal Trade Commission.

Two key findings emerged from these reviews. First, many young children are incapable of discriminating between program and commercial content and, secondly, most children are unable to recognize the persuasive intent of advertising.

I would like to submit for your reference a copy of APA's comments on the FCC docket number 83-670 which provides a more detailed summary of the studies resulting in these conclusions.

The problems resulting from children's limited cognitive abilities vis-a-vis television advertising are twofold. First, since most children do not understand the persuasive intent of commercials, they are unable to critically evaluate the claims made by advertisers. Studies indicate that children place indiscriminate trust in television advertising leading the FTC to conclude that advertising directed at young children is inherently unfair.

Second, studies indicate that television advertising directed at children can have negative effects on parent-child relations, and anyone who has accompanied a child to a toy store or has walked down the cereal aisle of a grocery store has witnessed this phenomenon.

Senator GORE. Witness is hardly a strong enough word.

Dr. WILCOX. The studies reviewed by the FTC and the National Science Foundation in reaching these conclusions have also been examined by the FCC as the commission was developing its policies regulating advertising in the early 1970s. In establishing protections against overcommercialization, the FCC argued that, and I quote, "The medium of television cannot live up to its potential in serving America's children unless individual broadcasters put profit in second place and children in first."

I think as members of this subcommittee are aware, the FCC of the 1980s has not always shared these priorities. In 1984 the FCC rescinded virtually all restrictions on advertising arguing the marketplace mechanisms would prevent overcommercialization. Specifically the commission argued that viewers would boycott programming containing excessive commercials forcing stations to reduce commercial content in order to remain competitive members in the market.

I think there is some reasonable logic in applying this to the adult programming, but its application to the child audience is fatally flawed. To be fair partners in the marketplace, viewers must be capable of recognizing that responding to differences in levels of stations' commercial practices.

Further, viewers have to have program options available if their tolerance for commercial material are exceeded. Unfortunately, as I have already noted, children are not always capable of differentiating commercial and noncommercial content.

Further, as any adult who has witnessed children watching television knows, children enjoy watching commercials. They are entertaining, they are very well produced, and studies support this observation.

Also, in many television markets, child viewers, even if they are offended by overcommercialization, they would be hard-pressed to find any other child-oriented content on competing stations. Numerous studies have confirmed the limited options in children's programming.

So, evidence supporting the failure of marketplace mechanisms to protect children from overcommercialization is also found in some recent studies which have found increases in the amount of

commercial time beyond the previous FCC limits following the FCC deregulation order.

In 1974 when the FCC first implemented its policies designed to protect children from excessive commercialization—since then nothing has changed either in the way child viewers process and understand message or in the way they are influenced by them.

Consequently, I cannot find any rationale for the FCC's abandonment of advertising limits designed to ensure broadcasters' and advertisers' profit interests do not compromise their public interest obligations.

From a scientific point of view and from a child's point of view, the issues I have raised apply equally to advertising on cable or broadcast programming. Whether the delivery medium is underground cable or the airwaves, from the child's point of view, TV is just a box with pictures and sound. Commercials are commercials and children remain inherently naive in their understanding in defending against commercial appeals that appear on television.

Thus, from both a scientific and from a public interest perspective, it would seem appropriate to limit cable advertising directed at children, to the extent possible.

The amendment proposed by Senator Danforth would seem to accomplish this objective in a manner that disadvantages neither cable operators nor broadcasters in their competition for viewers and sponsor dollars.

Before closing, I would like to take this opportunity to recommend to the subcommittee another action I believe worth considering. Given the wholesale changes that have taken place in the television field, from technology changes to the growth of independent broadcasters in the cable industry, it would seem to me that there is a need for a comprehensive analysis of the children's television field, covering issues such as advertising, program availability and development suitability of programming, programming content, effects on health and education, et cetera.

I would like to urge the subcommittee, at some point, to support such a major study, which could be conducted by a credible, impartial scientific organization, such as the National Research Council of the National Academy of Sciences.

Thank you for the opportunity to testify today, and I would be happy to answer questions of the committee.

[The statement follows:]

STATEMENT OF BRIAN L. WILCOX, PH. D, ON BEHALF OF THE AMERICAN PSYCHOLOGICAL ASSN.

Mr. Chairman and members of the Subcommittee, my name is Dr. Brian Wilcox. I am testifying on behalf of the American Psychological Association (APA). Over the past several years I have served as staff director of APA's Task Force on Television and Society. Many APA members are involved in scientific research on the cognitive capabilities of children. In particular, APA members have conducted much of the research concerning children's understanding of and susceptibility to television advertising.

I am pleased to speak with you today on the issue of advertising limits for children's programs on cable TV programming. First, I would like to commend this Subcommittee, especially its chairman, for providing leadership aimed at improving the quality and availability of children's television programming. The legislation recently passed by the Committee on Commerce, Science and Transportation represents a very positive and significant response to the FCC's total abdication of responsibility for guaranteeing that broadcasters uphold their public interest obligations to the child audience.

Among other things, the legislation I am referring to would reinstate restrictions on the number of minutes of advertising broadcast during children's programming. During markup of this legislation, Senator Danforth proposed an amendment which would apply these same limits, 10.5 minutes/hour on weekends and 12 minutes/hour on weekdays, to cable programming for children. Senator Danforth suggested that the logic of limiting advertising during broadcast programming should apply in a straightforward fashion to

cable programming. I agree completely. Let me briefly review the rationale for limiting advertising directed at children.

In testimony before this Subcommittee and the House Subcommittee on Telecommunications and Finance, as well as in comments to the FCC regarding its Notice of Proposed Rule Making/Notice of Inquiry on television commercialization policies, APA has argued that there is extensive, convincing evidence documenting young children's inherent vulnerability to commercial persuasion. This research has been reviewed and summarized by the National Science Foundation (Adler, et al., 1977) and the Federal Trade Commission (FTC, 1978). Two key findings emerged from these reviews: (1) many young children are incapable of discriminating between program and commercial content; and (2) most children are unable to recognize the persuasive intent of television advertising. I would like to submit for the record APA's comments on FCC Docket Number 83-670, which provides summaries of specific studies supporting the conclusions reached by the FTC and NSF.

The problems resulting from children's limited cognitive abilities vis a vis television advertising are twofold. First, since most children do not understand the persuasive intent of commercials, they are unable to critically evaluate claims made by advertisers. Studies indicate that children place indiscriminate trust in television advertising (FTC, 1981), leading the FTC to conclude that advertising directed at young children is inherently unfair (FTC, 1978). Second, studies reviewed by NSF indicate that television advertising directed at children can have negative effects

on parent-child relations. Anyone who has accompanied a child to a toy story or has walked down the cereal aisle of a grocery story has witnessed this phenomenon.

Policy issues. The studies reviewed by FTC and NSF in reaching the foregoing conclusions were also examined by the FCC as the Commission developed its children's advertising policy in the early 1970's. In establishing protections against overcommercialization, the FCC argued that "the medium of television cannot live up to its potential in serving America's children unless individual broadcasters...put profit in second place and children in first" (FCC, 1974, p. 39402).

As members of this Subcommittee are aware, the FCC of the 1980's hasn't shared these priorities. In 1984, the FCC rescinded virtually all restrictions limiting amounts of commercial content, arguing that marketplace mechanisms would prevent overcommercialization. Specifically, the Commission argued that viewers would boycott programming containing excessive commercials, forcing stations to reduce their commercial content in order to remain competitive members of the market. While there may be merit in applying this logic to adult programming, its application to the child audience is fatally flawed.

To be "fair partners" in the television marketplace, viewers must be capable of recognizing and responding to differences in the levels of stations' commercial practices. Further, viewers must have program options

available if their tolerance for commercial material is exceeded. Unfortunately, as I have already noted, children are not always capable of differentiating commercial and noncommercial content. Further, as any adult who has witnessed children viewing television knows, children enjoy watching commercials. They are entertaining and very well produced. Studies support this observation. Also, in many television markets, child-viewers, even if offended in overcommercialization, would be hard pressed to find other child-oriented content on competing stations. Numerous surveys have confirmed the limited options in children's programming. Evidence supporting the failure of marketplace mechanisms to protect children from overcommercialization is also found in recent studies such as the one by Kunkel (1987) which have found increases in commercial time beyond the previous limits following the FCC's deregulation order.

Since 1974, when the FCC first implemented its policies designed to protect children from both excessive and aggressive advertising policies, nothing has changed either in the way in which child-viewers process and understand such messages or in the way they are influenced by them. Consequently, I can find no rationale for the FCC's abandonment of advertising limits designed to ensure that broadcasters' and advertisers' profit interests do not compromise their public interest obligations.

Before turning to the specific issue at hand, it should be noted that both the FCC and the FTC felt that a complete prohibition on children's television advertising, though unworkable, was not inappropriate given the

evidence of harm to children. In both cases, these agencies opted not to invoke a complete prohibition, arguing that such action could potentially undermine the economic foundation supporting children's programming. Still, neither the original FCC limits of 9.5 and 12 minutes per hour nor the proposed limits of 10.5 and 12 minutes per hour have a magic aura about them. They reflect a very rough estimate of the amount of advertising time needed to make children's programming economically viable. In the end, the fundamental policy goal in this case must be to ensure that children are exposed to as little television advertising as possible.

From a scientific point of view and from the child's point of view, the issues I have raised apply equally to advertising on cable or broadcast programming. Whether the delivery medium is underground cable or the airwaves, commercials are commercials, and children remain inherently naive in their understanding of and defending against commercial appeals that appear on the television screen. Thus, from both the scientific and public interest perspectives, it would seem appropriate to limit cable advertising directed at children to the extent possible. The legislation proposed by Senator Danforth would seem to accomplish this objective in a manner that disadvantages neither cable operators nor broadcasters in their competition for viewers and sponsor dollars.

Before closing, I would like to take this opportunity to recommend to the Subcommittee another action I believe worth considering. Given the wholesale changes that have taken place in the television field, from

technological changes to the growth of independent broadcasters and the cable industry, it would seem that there is a need for a comprehensive analysis of the children's television field, covering issues such as advertising, programming availability and developmental suitability, programming content (prosocial, sexuality, violence. etc), effects on health and education, etc. I would urge the Subcommittee to support such a major study, which could be conducted by a credible, impartial scientific organization such as the National Research Council of the National Academy of Sciences.

Thank you again for this opportunity to testify on behalf of the 90,000 members of the American Psychological Association.

Senator GORE. Thank you. We will hold those questions until the panel is over with.

Our second witness is Geraldine Laybourne, President and General Manager of Nickelodeon/Nick at Nite. I might say, and I am sure others would echo my sentiments, my children certainly enjoy your programming, and I know that many children around this country do.

So, welcome, and please proceed.

STATEMENT OF GERALDINE B. LAYBOURNE, PRESIDENT AND GENERAL MANAGER, NICKELODEON

Ms. LAYBOURNE. Thank you for your kind remarks, Mr. Gore.

Mr. Chairman and members of the subcommittee of communications, thank you for giving me the opportunity today to testify on behalf of America's kids.

Nickelodeon, the first network for kids, was launched in 1979. At the time, we believed the state of children's television could never be worse. In the last decade we have seen worse. We have seen the rise and virtual fall of hastily produced shows based on toys.

But we have also seen improvement. We see cable providing many more options for kids, and we see major entertainment companies, like Disney, Warner and Fox, heavily investing in quality production for kids. This is a major breakthrough.

We believe that broadcasters should be responsible when it comes to kids' programming, and we believe that it is unfortunate that the actions of some broadcasters have necessitated this legislation.

We at Nickelodeon will not fight againt this legislation; we clearly and easily comply with it on a voluntary basis. The proposed legislation, as it applies to Nickelodeon and other cable programmers, is in fact a solution in search of a problem.

The real problem we should be focusing on is what can TV do for kids?

Today's kids are different than when you and I were growing up in the 1950's. We grew up in homes where fathers worked, mothers tended the family, and parents stayed married. We grew up looking forward to growing up.

If you asked an 11-year old how old they were, they would say they were almost a teenager. They looked forward to claiming that title. Today's kids feel differently. They feel pressured, they feel hurried, they feel frightened, and they have many problems to deal with.

They have heard about teenage suicide, drunk driving, teen pregnancy, drug addiction, and they are scared. There are very few places on TV where kids can just be kids.

In general, kids are portrayed on TV as being perfect, precocious, wonderful people. As adults we see these kids on TV and expect the same from ours. Our expectations contribute greatly to the amount of pressure on kids. We expect them to solve adult problems, behave like adults, and we often lose sight of their special needs.

What can television do for kids? It can be a positive influence for them. It can provide information kids care about, it can give them their own voice and help them feel comfortable with their self-image, it can help kids to solve problems, it can use humor to put life's stress in perspective, it can stimulate curiosity, creativity and excitement, and it can let kids be kids and be proud of it.

We have been able to accomplish a lot of that at Nickelodeon because that is our job. Our orientation has always been pro-kid, and we spend a lot of time with them; we listen to them, and that is our number one agenda. Aside from all the focus groups we do, we do massive ongoing research every year just to stay in touch with where kids are.

What is needed is a very constructive approach to better children's television. And Senator Inouye's proposed National Endowment for Children's Educational Television is probably the best example of something positive in this decade.

He clearly understands the marketplace and the economics of children's television. He has included commercial broadcasters in his proposal, enabling them to be able to tap into this source of programming.

What else can we do? Congress can continue to keep the spotlight on these issues in hearings like this; Congress can support Senator Inouye's proposal and allocate enough resources to make sure that it is an ongoing effort.

But producers also need to take the responsibility in finding shows that stretch kids' imaginations. We have found that fresh ideas actually turn out to be good for the bottom line.

Broadcasters should not be let off the hook by the contributions that the cable industry has made to variety and quality in children's television through the Disney Channel, Showtime, HBO, Discovery and Nickelodeon.

And finally, the media needs to devote more attention to this issue. Thanks to Action for Children's Television's relentless advocacy for kids, these issues have reached the American people.

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The press also has a broader responsibility. Rather than focusing only on negative issues, they need to highlight what is being done that is good.

We at Nickelodeon made a decision to run only eight minutes of commercial time per hour because we feel this offers an uncluttered environment to our viewers and our advertisers. And by the way, we only run four minutes of advertising when we run preschool programming.

We complied with the proposed legislation before it was proposed because we think it is better for kids and we think it is better for business. And we predict that the marketplace will continue to learn that what is good for kids is good for business.

Thank you.

Senator GORE. Would it not be great if all of our witnesses who came up here had a story like that to tell? That is just wonderful. Thank you.

And our final witness is John Hendricks. John is Chairman and CEO of the Discovery Channel.

And, Mr. Hendricks, the preface I used in introducing Ms. Laybourne would go just as well for you. If all programmers operated the way these two did, we would have a lot fewer problems, not only in the communications policy area, but in the world as a whole. And I want to congratulate you on the job you do.

Mr. Hendricks, please proceed with your presentation.

STATEMENT OF JOHN S. HENDRICKS, CHAIRMAN AND CEO, CABLE EDUCATIONAL NETWORK, INC., THE DISCOVERY CHANNEL

Mr. HENDRICKS. Thank you very much, Senator.

I appreciate the opportunity to appear before this subcommittee again, and to comment on this act and the proposed amendment by Senator Danforth.

As background, the Discovery Channel is a basic cable television network, which was launched on satellite on June 17th, 1985, and is today available in 45.5 million cable households across the United States. Fifty percent of all Americans today have access to Discovery Channel programming, which is comprised exclusively of non-fiction documentary entertainment in the areas of science, technology, nature, history, world cultures and human adventure.

In addition to our normal documentary programming, which appeals to persons of all ages, we recently initiated on September 18th, 1989, a special programming service for teachers called Assignment Discovery, which airs every weekday morning from 9:00 a.m. to 10:00 a.m Eastern Time.

In addition to information of interest to the teacher as a professional, each Assignment Discovery hour contains two commercial-free documentary programs, which have been designed for teachers to tape and later play to students in the classroom, free of charge.

This new service supports education in the sciences, arts and humanities, geography and world events.

Through Assignment Discovery and other initiatives, the Discovery Channel hopes to demonstrate that television can be a positive force in our society.

For the purposes of this hearing, you should know that national commercial time on the Discovery Channel is limited to seven and a half minutes per hour. An additional two minutes per hour is available for our cable operator affiliates to sell and insert local commercials. This brings our total commercial time per hour up to nine and a half minutes.

Concerning the proposed Children's Television Act of 1989, I would like to first praise this subcommittee for the responsible way you have investigated the role of television in the education of children, and also the potential over-commercialization of programming directed at children. These are important issues which deserve careful study and debate.

However, during these hearings, and before regulation is finally imposed, I hope that you will further examine the response of the marketplace to the perceived shortcomings of television. You see, whenever a product like television fails to live up to the expectations of consumers, opportunities are created for product improvement by competitors.

It is my strong belief that regulation imposed in the marketplace should come about only after congressional determination that competition is simply inadequate to improve a product or overcome its shortcomings.

For example, it was my assessment in 1982 that broadcast television did not offer enough documentary entertainment to the American public. There was an opportunity in this shortcoming, and through the distribution technology of cable, the Discovery Channel is today meeting the demand for documentary entertainment in half of all households in America, and our growth is continuing.

In terms of providing children's programming, the many competitors of commercial broadcast stations today include the Discovery Channel, Nickelodeon, the Disney Channel, and let us not forget the commercial-free children's programming offered both by PBS and by the local video rental store.

I suggest that these competitors are up to the task of overcoming the perceived shortcomings of children's television offered by commercial broadcasting.

Fifteen years ago, when we were all dependent on commercial broadcasting for our television entertainment in the home, this kind of legislation could make real sense. But considering the television choices and alternatives offered in today's competitive environment, I think we must question the need.

Mr. Chairman, having said all that I have about regulation as a last resort when Congress has determined that it is necessary due to lack of competition, if this legislation is inevitable, and it looks like it is, it is hard for me to argue that it be imposed on one set of program providers, broadcasters, and not another cable.

Although we in cable already limit our commercial time tc within the proposed limits, because we believe this is the right thing to do, especially in programming directed at children, it would be unfair to impose a potentially economic disadvantage on the broadcasters and not cable, even though it is really unnecessary for us.

And this has been our position concerning must-carry as well. We feel that if must-carry status is given to the independent broad-

casters, it would put an economic disadvantage on some of us in cable, who likewise would like to get some of those lower channel positions, and we feel it is unfair for us to have that economic disadvantage. And so our rationale here is consistent with that; we feel that it should be a level playing field.

Thank you very much.

Senator GORE. Thank you all for excellent statements. I would like to first recognize Senator Danforth for questions.

Senator DANFORTH. Thank you all very much. The amendment that was offered was focused on just one part of Senator Inouye's legislation, and that was the amount of advertising shown on television—children's television.

Would it be your view that all of the legislation should be equally applicable to cable and to broadcast television? In other words, I am sure that the cable people will think that, you know, give them an inch and they will take a mile, but what is the difference, really, as far as a kid is concerned?

In other words, Senator Inouye's legislation provides for limitations on the amount of advertising. It also says that programming should be designed to serve the educational and informational needs of both preschool and school-age children, and it requires the FCC to complete its pending proceedings regarding program-length commercials and to take particular account of the cognitive abilities of children. Why should the whole bill not apply to cable?

Mr. HENDRICKS. Well, Senator, I think cable is such a very different product. Cable television is like a great laboratory for television in this country.

You have vertically formatted cable networks—for example, C-Span, which is all congressional hearings; Discovery Channel, all documentaries; and Nickelodeon, all children's programming. But you also have program formats like home shopping and it is just impractical to impose on the home shopping networks and some of the other vertical programmers, for instance, all-movie services, that they be subject to content regulations, for instance.

Senator DANFORTH. I understand that, but that is parallel to the point that was made when we had the mark up of the bill. But what I am saying is, insofar as there is children's programming, insofar as there is a children's audience for a channel, why should the same rules not apply? I mean, for example, the program-length commercials, so-called program-length commercials? Why should there be a different rule for broadcast or for cable, or should there not be?

Dr. WILCOX. Well, Senator, right now there is no rule on program-length commercials, and whether the legislation in question would simply require that the FCC rule on the pending docket issue addressing program-length commercials, it may well be that the FCC will argue that there should be no restrictions on what we call program-length commercials.

Senator DANFORTH. That could be, but what I am saying is, whatever the FCC does, if it does anything at all, should we view cable and broadcast television with respect to children in the same light?

Dr. WILCOX. I would argue that on the issue of program-length commercials, since then we are talking about commercial content, yes, the same rules should apply, and in essence they would, in a

roundabout way, because if we define those programs as commercial content then those minutes would presumably count against the number of minutes applicable to these limits we are discussing now.

So if you have 27 minutes of program time—or 23 minutes of program time and we define it as commercial contents, than we have violated the ten and a half.

Senator DANFORTH. That is possibly the way the FCC would conclude the matter, I do not know. But what I am asking is a more general philosophical question: not whether whatever the FCC does would be within the time limits of the statute otherwise, but as a general principle, what is the difference between cable television and broadcast television when it comes to the problems that are addressed by Senator Inouye's legislation?

Ms. LAYBOURNE. Senator Danforth, if I might jump in, you know, I think you are asking a question about program-length commercials, and we believe that the marketplace has decided that program-length commercials do not work.

Kids have turned their back on those programs. They were hastily produced, they did not work. Unfortunately, kids were subjected to them over a period of several years before the marketplace really determined that.

You might look at Sesame Street and say, is that a program-length commercial, because there is merchandising attached to that. As a programmer, we have concerns about legislation that is rigid in any way that might preclude any future Sesame Street, because the reason that Sesame Street has been in existence for 20 years is because of the merchandising efforts that have supported it along the way.

Senator DANFORTH. I understand what you are saying, but your comments go to the advisability of any legislation, or any regulation, relating to program-length commercials. In other words, you are saying that the marketplace will take care of it, presumably for broadcast television as well as cable television.

But what I am asking is, if the government acts either through legislation or through regulation, whether it is wise action or not is a different question, but if government acts, is there any rational reason to distinguish between broadcast television and cable television?

Ms. LAYBOURNE. Probably not.

Senator DANFORTH. Mr Hendricks?

Mr. HENDRICKS. In terms of programming for children, I would not see there would be any difference.

Senator DANFORTH. Pardon?

Mr. HENDRICKS. In terms of programming directed at children, I think legislation should be consistently applied both to the broadcasters and to cable.

Senator DANFORTH. Dr. Wilcox?

Dr. WILCOX. The only distinction is a legal policy distinction, not a distinction from the point of view of children, and that legal policy distinction is the public interest obligation of broadcasters, given their regulation by the Communications Act. Those same obligations are not applied legally to the cable industry. Congress can decide to apply them.

Senator DANFORTH. As a matter of policy and as a matter of—viewing it from the standpoint of kids and whatever we are seeking to accomplish through this legislation, the policy objectives really should be the same for both cable and broadcast, right?

Dr. WILCOX. Certainly.

Senator GORE. Would the Senator yield, briefly?

Senator DANFORTH. Sure.

Senator GORE. Ms. Laybourne, you said they are not being produced any more, with reference to program-length commercials, but some Japanese toy manufacturers—Nintendo, for example—is now offering——

Ms. LAYBOURNE. I did not mean to say they are not being produced. The phenomenon of them has passed.

Senator GORE. Well maybe, maybe not. Super Mario Brothers II is on now, and a whole line of such programs is in the works to mimic the game cartridges for the computer fames.

Now, I think where you draw the line, of course, is a difficult question. Some people are arguing that Senators and Congressmen are now offering program-length commercials to supplement the campaign 30-second ads that used to be the substance of campaigns.

I appreciate my colleague yielding.

Senator DANFORTH. I have one more informational question, and it has to do with cable's share of the children's television market. It is my understanding that the cable share of the Saturday morning audience has increased from 11 percent to 19 percent between 1986 and 1989. Is that right?

Ms. LAYBOURNE. I do not know those specific statistics. I know Nickelodeon's share of viewing, if you take the viewing pie, we get 25 percent of all kids' viewing time in all households, not just cable households.

Senator DANFORTH. Nickelodeon alone?

Ms. LAYBOURNE. Nickelodeon alone. Understand that the three networks are only on for five hours on Saturday morning. We are on 91 hours a week and we get 25 percent of all kids viewing, so I do believe that Nickelodeon has proven in a lot of ways that our good solid standards for kids' advertising and kids' programming does pay off.

Senator DANFORTH. That is amazing, 25 percent. What is a kid——

Ms. LAYBOURNE. It may be 24 percent. I am sorry.

Senator DANFORTH. But what is a kid in this definition? It is under what age?

Ms. LAYBOURNE. We program to 2 to 15-year-olds, but most of our audience is actually in the standard television definition of 2 to 11-year-olds.

Senator DANFORTH. Around 25 percent of all the television that is watched by——

Ms. LAYBOURNE. No, no. All kids' programs.

Senator DANFORTH. All kids' programming that is watched is Nickelodeon?

Senator GORE. Broadcasters do not produce any kids' programming.

Ms. LAYBOURNE. Saturday morning viewing.

Senator DANFORTH. They do. I mean, how about Lassie?

Ms. LAYBOURNE. It's on Nickelodeon.

Senator GORE. It is on reruns on cable.

Senator DANFORTH. How about Discovery? What percentage of the children's market does Discovery have?

Mr. HENDRICKS. Well, it is hard to define. About 38 percent of our programming is nature programming, and when we have furry animals on, we have a lot of children viewing, so it is hard for us to define. But we know we have a substantial children's audience. It is nowhere near Nickelodeon's, but it is substantial.

Senator DANFORTH. Is it growing?

Mr. HENDRICKS. Yes, very much so.

Senator DANFORTH. The same true for Nickelodeon?

Ms. LAYBOURNE. Absolutely. Not only is our subscriber base growing—we are in 47 million homes—but our ratings steadily increase every year.

Senator DANFORTH. And do your two channels have the lion's share of the children's cable market or are there others?

Ms. LAYBOURNE. USA network has a significant block in Cartoon Express, CBN has a block of children's programming, TBS has some programming.

Mr. HENDRICKS. And then there's a pay service, the Disney Channel, that is in about four million homes because it is a pay service, but it is almost exclusively children's and family entertainment.

Senator DANFORTH. Would it be fair to say that the cable television has significantly more than half of children's television?

Ms. LAYBOURNE. No.

Senator DANFORTH. You have 25 percent yourself.

Ms. LAYBOURNE. That would not be fair to say. I think cable altogether has—I would have to check those figures, but it is less than half.

Senator DANFORTH. Would it be somewhere between 25 percent and half?

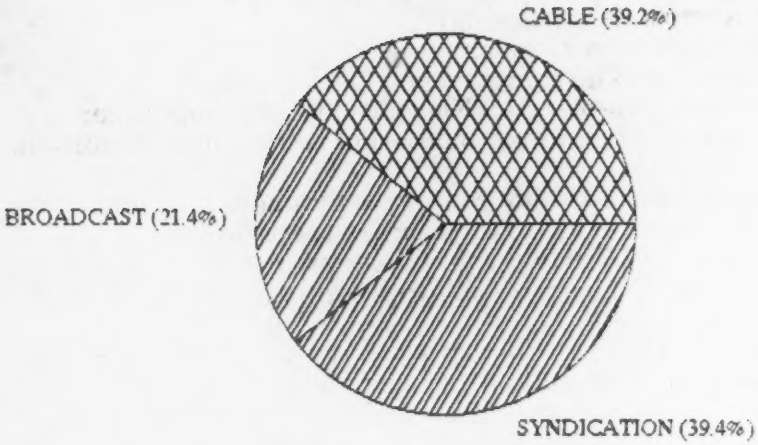
Ms. LAYBOURNE. I have those figures. I just do not have them with me.

Senator DANFORTH. Can you furnish them for the record?

Ms. LAYBOURNE. We would certainly be happy to do that.

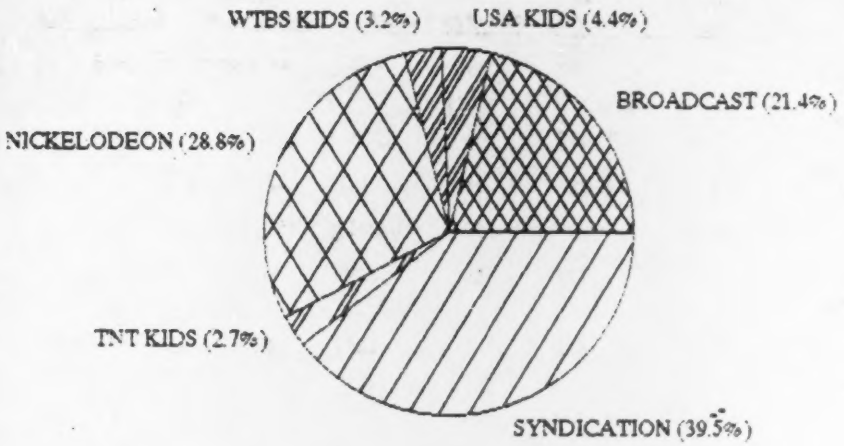
[The following information was subsequently received for the record:]

CABLE – 39.2% OF TOTAL KIDS 2–11 VIEWING
BASED ON WEEKLY KIDS 2–11 IMPRESSIONS



SOURCE: NHI, Cable Network Audience Composition Report, 2nd Quarter 1989
NSS Pocketpieces, 2nd Quarter 1989 averages
NAD, May 1989
WTBS & USA Pocketpieces, 2nd Quarter 1989

NICKELODEON CABLE – 28.8% OF TOTAL KIDS 2–11 VIEWING
BASED ON WEEKLY KIDS 2–11 IMPRESSIONS



SOURCE: NHI, Cable Network Audience Composition Report, 2nd Quarter 1989
NSS Pocketpieces, 2nd Quarter 1989 averages
NAD, May 1989
WTBS & USA Pocketpieces, 2nd Quarter 1989

KIDS 2-11 WEEKLY SHARE - DATA BACKUP

	Kids' Programming Weekly Hours	HH (000)	K2-11 PM VPVH	K2-11 (000)	K2-11 Weekly IMPS	Weekly K2-11 Share
Nickelodeon	98.0	512	.89	456	44,688	28.8
Nickelodeon Syndication	5.0	1,825	.66	1,205	6,025	3.9
Broadcast	15.0	3,254	.68	2,213	33,195	21.4
Syndication M-F	50.0	1,507	.68	1,025	51,250	33.0
Syndication Once A Week	6.0	1,173	.57	669	4,014	2.6
WTBS Kids Programs	17.5	685	.42	288	5,040	3.2
USA Kids Programs	25.0	413	.68	274	6,850	4.4
TNT Kids Programs	29.0	218	.63	146	4,234	2.7
Total	250.5				155,296	100.0

Source: NHI, Cable Network Audience Composition Report, 2nd Quarter 1989
NSS Pocketpieces, 2nd Quarter 1989 averages
NAD, May 1989
WTBS & USA Pocketpieces, 2nd Quarter 1989

Senator DANFORTH. Thank you all very much for your testimony. It has been very helpful.

Senator GORE. In order of arrival, Senator Burns.

Senator BURNS. I should have started first. Oh, that stair gets you, does it not?

Senator GORE. It is early.

Senator BURNS. It is awfully early. Thank you, Mr. Chairman. I just want to ask a couple questions.

You know, Ms. Laybourne, you said a while ago that program length commercials did not work, and kids were kind of turning them off. Yet, we hear a different story from Dr. Wilcox who said that kids have a tough time differentiating programming from commercial content.

I would just like for you to elaborate on that a little bit if you would and also, for all of you, we see Dukes of Hazard. Is that considered a kid's show?

Ms. LAYBOURNE. Lots of kids watch that, but that would not be considered a kids' show as we define kids' programming. It is shows

that have predominant kid viewing. Dukes of Hazard has a large audience, but if it is not in a kids' block——

Senator BURNS. Well, they sell that automobile, you know, and you find those toys on the shelf, too. So, I wondered. I do not know where we draw the line. I think that would be a very difficult thing to do.

Dr. Wilcox.

Dr. WILCOX. You mentioned the seeming contradiction between the fact that program length commercials—kids are turning them off. Yet, I have argued that many kids cannot even understand the differences between the commercial content and the programs themselves. There really is not a distinction there.

The reason kids are turning off these programs is they are bad programs. They are very poorly produced. They are not entertaining, and kids do not like them.

There are higher quality program length commercials out there that have been very successful commercially that have been on for years, and there are more coming. So, it is not in essence the format that is problematic from the kids' point of view. It is the fact that most of them have been lousy programs.

Senator BURNS. I understand in Rochester, New York, a cable system has established a cable station which would offer local programming, have its own sales department to sell advertising time, has even gone as far as to create its own call letters.

Now, if a cable station is behaving like a broadcast station, should it be required to comply with the same programming obligations this bill would impose on broadcasters, Mr. Hendricks?

Mr. HENDRICKS. Yes, I think you should just apply it across the board. If there are regulations on children's programming that are directed at the broadcasters, they should be equally applied to other television providers, such as those of us in cable, whether we be nationally delivered services or a locally originated cable station.

Again, the encouraging thing out of all of this is that it is treating everybody on an equal playing field. For those of us in cable, we felt like we had been second class citizens, at least the cable networks, because you have independent broadcasters clamoring for a special ride to be on a lower designated channel, which is an economic advantage.

I would love to be near an NBC affiliate and so would the independent broadcasters and so would Ms. Laybourne and Nickelodeon. So, we feel like television carriage rules should be equally applied. And, it is just with that consistent position that we have taken that we think any children's television regulations should be equally applied to all of us who are competing in the children's programming arena.

Senator BURNS. Ms. Laybourne, I would sure like to talk to you after the hearings today because I have some questions for you.

But, Mr. Wilcox, you noted in your testimony the inquiry conducted by the FTC concerning children's television. What was the ultimate conclusion in that study that I would imagine would cover part of that, that children have a hard time telling the difference between programming and commercials? Did they draw any conclusions from that hearing?

Dr. WILCOX. Well, the conclusion they drew was that in the ideal world, which does not exist, we would not have any commercials on children's television. But, given the fundamental importance of commercials to keeping children's programming on television, be it cable or broadcast, and the public obligation is to minimize the commercial content and thus the FCC following the recommendations of the Federal Trade Commission imposed limits which they felt guaranteed a broadcaster's profit but did not overcommercialize children's programming.

Senator BURNS. I have no further questions. Thank you, Mr. Chairman.

Senator GORE. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I will admit to having some increased interest in this issue, being the father of a five-year old and a three-year old and a one-year old and have observed from time to time some of the things that they are watching.

And one of the questions I have for you is that several of these programs, it is hard to differentiate between what is commercial and what is the story. In other words, some of the products they are selling or hyping is part of the regular program. How do you get around that problem?

Mr. HENDRICKS. It is very difficult, and I think Ms. Laybourne brought up the point about Sesame Street. You know, I have a four and a six-year old, and we have Bert and Ernie dolls all through the house, and that is a program that we all think is very high quality. We encourage our children to watch.

Part of the economic vehicle that is driving that show has been the merchandising through the years. I think that the challenge is to draft children's television legislation so that you protect children from just the blatant commercialization of program length commercials that are exploitive in nature versus the high quality programs that could be developed in the future, like a Sesame Street-type program that could be on commercial networks.

Senator MCCAIN. I was not thinking so much of Sesame Street because anything that gains some kind of popularity is going to have a commercial spin-off. But these mighty hero things were actually the product they are selling.

Senator GORE. She Ra, He Man

Senator MCCAIN. Actually the product they are selling is the subject of the program and the content of the program itself.

Ms. LAYBOURNE. If I could just answer in a broad way here, we have a set of voluntary commercial guidelines at Nickelodeon where we do a lot to protect our viewers. Number one, we would never run a commercial for a product that was in any way related to the program adjacent to that program. Number two, we would always put commercials in a separated block so that a kid knows when the commercials start and when they end so that it is very clear to our viewers where the commercial pod is.

I understand your question is where do kids——

Senator MCCAIN. Ms. Laybourne, I was not referring to Nickelodeon. I was referring to other programs where clearly——

Ms. LAYBOURNE. There are conventional program standards that broadcasters in the three networks use in clearing commercials

and in placing commercials and that Nickelodeon complies with as well.

Senator MCCAIN. Well, apparently those standards are not being complied with.

Mr. WILCOX. They are not always complied with. The FCC actually still has in existence two regulations regarding children's commercialization, and they both refer to what is called the separation principle. Broadcasters are supposed to provide a notice before a commercial begins and after it ends saying, "Now, a word from our sponsor," a five-second break introducing the commercial, and when they come out of the commercial, they are supposed to provide a message. They do that.

They are also supposed to not engage in a practice called host selling. That means that on the He Man of the Universe program you are not supposed to have advertisements for He Man of the Universe toys. Unfortunately, this gets violated fairly often.

I watch children's TV routinely and videotape it and anytime I come across a violation, I write the FCC. I have never received a response from the FCC, but it is commonly violated.

Senator MCCAIN. Well, if it is commonly violated, then what needs to be done here? What do we need to do? Adopt this legislation? Will that cure it?

Dr. WILCOX. For that problem there are actually regulations in existence. They just need to be enforced, and I think Congress can certainly give the FCC a kick in the pants.

Senator MCCAIN. So, in your view, to cure that part of the problem all we need to do is get the FCC to enforce.

Dr. WILCOX. I would also love to see a strict ban on program length commercials. I do not know that anyone is ready to move quite that far, but you know, prior to 1984 those programs were banned from the airwaves. In the mid-1970s the FCC looked at a proposal from Matel Toys for a program called Hot Wheels, and they said this is nothing but a commercial disguised as a program, and we will not allow that.

In 1984 the FCC decided that they would allow such programs and, as has been mentioned already, they popped up everywhere. We are starting to see a diminution of those programs already, but there is still plenty of them, and they are problematic.

Senator MCCAIN. My only point here is—and I would be glad to hear any responses you might have—although this legislation may go some distance in addressing the problem, if we are going to have the widespread abuses where it is impossible to differentiate between a commercial and a program, then these kinds of guidelines are, to some degree, meaningless.

Dr. WILCOX. I do not think so because we have a new FCC, and we have already had indications that is an FCC that is more interested in the welfare of children.

One of the commissioners when speaking at her confirmation hearing expressed a great deal of concern about the status of children's TV and especially the issue of commercialization. So, I have high hopes for the new FCC.

I also think the simple fact that congressional interest in this issue can spur action on behalf of the FCC—we used to speak of the relationship between Congress and the FCC as the raised eye-

brows approach to regulating television. Congress would attend to an issue, FCC would respond.

In the past decade or so the FCC quit responding. But I think we are about to see a turnaround in the action of the FCC.

Ms. LAYBOURNE. If I could just point you in one direction, the preschool audience is an audience that we should all care a lot about. They are an audience that is very susceptible to learning. They have no pejorative feelings about school. They have not been there yet, so they do not have any negative attitudes about educational programming, and yet, it is the most difficult programming to fund from an advertiser base. Advertisers simply are not as interested in the two to five-year-old audience, even though we all know that they are influential in the grocery store.

Senator Inouye's proposed endowment is a very important proposition. We need to be doing something constructive, something that will be ongoing, that people can count on. Otherwise, preschool programming will not be developed.

We just recently produced a massive program called Eureeka's Castle for Nickelodeon, because we have a dual economic base; we get money from the cable operators who appreciate the fact that Nickelodeon makes them look good in their community, and we can afford to fund preschool programming. There are not very many other broadcasters who can afford to do that.

And it is important that there be an economic base for preschool programming.

Senator MCCAIN. Mr. Hendricks, do you believe the solution of the issue that I raised lies just simply putting more heat on the FCC?

Mr. HENDRICKS. That is a great start. And I think, again, the challenge is looking at the program-length commercials just to make sure that you can—I think the staff could probably develop the language—protect children against the exploitive shows while making sure there is flexibility that could permit a Sesame Street-type program that could be on commercial television, whether that be on cable or broadcast.

Senator MCCAIN. Thank you very much, Mr. Chairman.

Senator GORE. Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Mr. Chairman, thank you for calling today's hearing. In view of the growing influence of cable television and cable television programming in this country, no attempt to regulate advertising on childrens' television would be particularly meaningful without considering cable as well as broadcast television. Thus this hearing is important to finish the business we began at the last mark-up.

I would have preferred the language worked out by the broadcasters and Action for Childrens' Television to that reported by this committee earlier this month, but that question has already been decided by this committee. Now it is time to decide if the same advertising standards should apply to cable television programming for children.

As I said, we have already reported a childrens' television bill out of this committee, under a somewhat unusual procedure. If we decide to approve the inclusion of cable programming in the advertising limitations of this bill, I am not sure how, or even whether, that will be reported to the floor.

Regardless of the procedural outcome of today's hearing, however, I have a concern regarding the application of the underlying legislation. Last year, when this legislation was debated on the floor, Chairman Hollings and I engaged in a short discussion concerning the definition of "childrens' programming." The term was never defined as such in the legislation, but the Chairman affirmed that we intended "childrens' programming" to mean programming originally produced and designed for children aged twelve years old and under, as described in the 1974 FCC Policy Statement on Childrens' Television. It is still my understanding and intention that the FCC continue to use this definition as a basis for the application of whatever legislation is ultimately passed.

Mr. Chairman, thank you again for calling this hearing. I look forward to the testimony of the witnesses.

Thank you, Mr. Chairman. I think the areas of interest that I have, have been covered in the questioning.

But, in view of the growing influence of cable television and cable advertising on children's television would be particularly meaningful without considering cable as well as broadcast television. Thus, this hearing and the testimony that has been given is very important to finish up the business we began at the last markup.

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It is still my understanding and intention that the FCC continue to use this definition as a basis for the application of whatever legislation is ultimately passed.

Senator GORE. Thank you, Senator Pressler.

Let me ask a couple of brief questions, and then we are going to conclude today's hearing.

First, without objection, we will include in the hearing record a communication addressed to the chairman of our subcommittee, Senator Inouye, from Jim Mooney, who is President and CEO of the National Cable Television Association, in which the NCTA says they do not object, on principle, to the Danforth amendment.

They have some objections—well, they say that it is, for practical purposes, unnecessary in their view, but they do not object to the amendment. And some of us believe it might be necessary; I know Senator Danforth feels that way. And that will be in the record.

Dr. Wilcox, you said that the FCC used to employ the raised-eybrow approach to regulation. I would say they now use the rapid-eye-movement approach to regulation.

Dr. WILCOX. Look-the-other-way.

Senator GORE. Rapid eye movement, of course, is what occurs during deep sleep with the eyes closed. And I welcome the statements of all three witnesses about the amendment offered by Senator Danforth.

What about enforcement? Ms. Laybourne and Mr. Hendricks, do you have any views to offer there?

There is an atomic bomb of regulation, where broadcasters are concerned. They are threatened with losing their license. The Communications Act allows fines, as I understand it, up to $25,000 per violation on a cable operator, up to a maximum of $250,000 per year. Is that a sufficient enforcement tool for a provision like the one embodied in the Danforth amendment?

Ms. LAYBOURNE. As a programmer who gets over half our revenue from cable operators, I would never want to put them in a position of having to pay a fine, because of my practices.

Mr. HENDRICKS. I think, in terms of the penalties, what you have outlined is fairly severe. I think there is another one that cable operators have to face; all of them have franchise agreements, those that have been given their franchise within a geographic area. And as part of that agreement, they have to comply with the laws, in order to get their own franchise renewed.

And so they have their atomic bomb, I think, just like the broadcasters, if these regulations are extended to the cable operator.

Senator GORE. Well, the federal law now sharply limits what local laws can accomplish. For example, if a local cable operator offered a channel that began to carry extremely violent and explicit R-rated movies in the afternoon, could the local franchising authority require that that operator reevaluate and stop showing that kind of programming in the early afternoon, when the kids came home from school?

I mean, I ask the question partly rhetorically, because I believe the answer is that under the 1984 act, the Federal Government tells the local franchise authority, no, it cannot; it has no authority to do that.

Certainly, if a broadcaster engaged in such a practice, the FCC might, if it awakened from its REM approach, require a change in that pattern of programming.

Should we really have across-the-board equality in what can be accomplished there? Should the local franchising authority be given back enough power to accomplish that specific result?

I mean, I do not want to take you beyond the limits of what you came here prepared to discuss, and I will not press you for an answer.

Ms. LAYBOURNE. You are.

Senator GORE. But I do think that it is an important point, which is embodied in the Danforth amendment.

I will say for myself that I am satisfied by the hearing this morning and the evidence presented, that indeed it is wise to include the Danforth amendment in the legislation, which is on its way for floor consideration.

I just want to make the point that the reason it makes sense is a reason which can be applied to other subjects and issues and concerns as well. And I have no desire to complicate passage of either the amendment or the bill as amended by pursuing those points in this contex, but they may come back up.

Let me say, with respect to advertising, broadcasters have urged advertisers to restrict the nature of ads for beer and wine products, so as not to worsen the problems of teenage drinking and drunk driving, and to enhance the risk to those 10 percent of our population which are in extreme risk of becoming alcoholics.

Do cable programmers or operators have such standards? Should they? I see a lot of wine cooler commercials in and around children's—well, movies that are aimed at young audiences and afternoon programming. Should there be some standards there?

Mr. HENDRICKS. Again, I think you have to look at what we are doing now, and I think that most of us in cable are trying to differentiate our product by being responsible. And the cable product today includes things like Nickelodeon, Discovery and C-SPAN.

So, again, I think, voluntarily, we are imposing restrictions on ourselves.

Senator GORE. Well, you know, any time we have Nickelodeon/Nick at Nite and the Discovery Channel up here, we have to acknowledge the tremendous service that you all are providing to children who have access to cable television. I think it is just outstanding.

And if all programmers were in the same boat, we would really be well off, indeed, in this country.

I think it has been a good hearing, and I think that you all have helped Senator Denforth make his case. And as I have said earlier, I anticipate that that amendment is going to get a very favorable reception from those of us on the committee who wanted to pause and look at the evidence. And I hope the rest of the Senate will agree.

Senator Danforth.

Senator DANFORTH. Nothing further.

Senator GORE. Thank you all for coming. The hearing is adjourned.

[Whereupon, at 10:36 a.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

National Cable Television Association

James P. Mooney
President &
Chief Executive Officer

1724 Massachusetts Avenue, Northwest
Washington, D.C. 20036
202 775-3655

October 18, 1989

Honorable Daniel K. Inouye
Chairman
Subcommittee on Communications
Committee on Commerce, Science, and Transportation
227 Hart Senate Office Building
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The National Cable Television Association is pleased to submit its views on the proposal offered by Senator Danforth to include cable television in the Children's Television Act of 1989. We understand Senator Danforth has proposed extension of the commercial time limitations in that Act to children's programming provided by cable systems.

NCTA represents approximately 2,700 cable television systems serving more than 80% of the 50 million households in the United States, and 56 cable programming networks engaged in creating and packaging a great diversity of cable television programming.

NCTA has no objection in principle to Senator Danforth's proposal to extend the commercial time limitations of the Children's Television Act of 1989 to cable television systems. Cable television already is subject to many of the same programming obligations and regulations that are required of television broadcasters, such as the "equal opportunities" and "lowest unit charge" requirements for political candidates.

In considering the proposal of Senator Danforth, NCTA urges the Subcommittee to make clear in the bill that cable operators would be responsible only for commercials carried on cable programming. They should not be responsible for violation of the limitations by broadcast stations that are retransmitted by cable systems.

As you know, broadcast stations are carried pursuant to the compulsory license of the Copyright Act. That law requires cable systems to retransmit broadcast programming in its entirety, including all commercials, and would prevent a cable operator from deleting advertising on a broadcast signal in order to

comply with the commercial limitations of the Children's Television Act.

In addition, in considering Senator Danforth's proposal, NCTA believes it is important to keep in mind some fundamental distinctions between broadcast television and cable television.

Broadcasters deliver television programming through their free use of the public resource of the spectrum. Using the public's airwaves, broadcasters place a signal directly into the homes of the communities they are licensed to serve. Congress and the FCC have found it necessary to impose programming obligations and restrictions on broadcasters in order to assure that their single channel of programming lives up to their public trustee responsibilities.

By contrast, cable television operators use their own coaxial cable to deliver television programming on a subscription basis. Cable customers bring cable into their homes by choice. It is a choice they make each and every month.

Cable operators go to great lengths to offer a diversity of programming choices to their customers. Different channels specialize in serving unique interests of different groups among cable's customers. As distinguished from broadcasters, who tend to aim at very broad audiences, many individual cable channels are intended for specialized audiences. It is the whole of the diverse programming package offered by the cable operator that provides something for everyone.

The cable industry has long recognized the special need for quality children's programming. Accordingly, cable television has been at the forefront of developing programming designed specifically to meet the educational and informational needs of children. A list of cable program networks providing children's programming is attached to this letter. The list also details the amount of commercial advertising time that is available on some of these networks. As you will see, generally networks that receive support from advertisers are well within the commercial limitations set out in the Children's Television Act of 1989. Other networks, such as C-SPAN, carry no commercials at all.

The cable television industry is leading the way in providing quality programming especially designed for children, and has exercised restraint in the amount of advertising carried during such programming. Although we believe that cable television stands as a model for what children's programming

should be, and that, therefore, inclusion of cable within this legislation is -- for practical purposes -- unnecessary, NCTA does not object to cable's inclusion in the committee bill.

NCTA stands ready to work with you, Senator Danforth, and the other members of the Subcommittee to help fashion the appropriate amendment.

Sincerely,

James P. Mooney

Enclosure

Cable Network	Number of Minutes of Advertising Per Hour During Children's/Young Adult's Programs
Arts and Entertainment	8 minutes/hour
CNBC	9 minutes/hour
C-SPAN	No advertising
The Discovery Channel	9 minutes/hour[1/]
Disney	No advertising
ESPN	9 minutes/hour
The Family Channel	12 minutes/hour
FamilyNet	0 [2/]
HBO	No advertising
The Learning Channel	0[3/]
Lifetime	12 minutes/hour[4/]
MTV	9 minutes/hour
Nickelodeon	8 minutes/hour[5/]
Showtime	No advertising
SuperStation TBS	9.5 minutes/hour
TNT	9.5 minutes/hour
USA Network	12 minutes/hour

1/ The Discovery Channel's only program specifically targeted at children is "Assignment Discovery," which has no commercials. However, Discovery's nature documentaries are viewed by children. The average number of minutes of commercial time on these documentaries is nine minutes per hour.

2/ Except during Quigley's Village. This half-hour program contains six minutes of advertising.

3/ The Learning Channel runs no commercials during its children's programming. During young adult programming, approximately two minutes of advertising per hour are aired.

4/ Lifetime's only programming geared to children/young adults is What's Up, Doctor Ruth. This half-hour program contains six minutes of advertising.

5/ Except during Pinwheel, when only five minutes of advertising are aired.

INDIANA UNIVERSITY

DEPARTMENT OF TELECOMMUNICATIONS
Radio-TV Center
Bloomington, Indiana 47405
(812)

'89 NOV 20 PM 3:09

November 16, 1989

Senator Ernest Hollings
U.S. Senate
Washington, DC 20510

Dear Senator Hollings:

We are scholars at different universities across the country who conduct research on children and television issues. We all have extensive familiarity with the public policy landscape in this area and most of us have provided testimony to Congress and/or the Federal Communications Commission (FCC) on the policy implications of our work. We are writing to draw your attention to legislation that could accomplish dramatic improvements in the quality of children's television.

Recent actions by the FCC have contributed to a decline in television's service to the child audience. In 1984, the FCC deregulated its long-standing policy that each television station, as part of its public service, should provide at least some educational programming for children. The FCC also rescinded previous limits on the amount of advertising allowed during children's programs and lifted its restriction on program-length commercials. These policies are essential for children to be well served by broadcasters, who are required by law to serve the public interest because they are operating on the publicly-owned airwaves.

Two bills have been introduced in the Senate to address the issue of children's television, S. 707 and S. 1215. The first bill, S. 707, falls far short of what is needed to accomplish meaningful improvement. This measure would require broadcasters to serve the educational needs of children through their "overall programming." Though well-intentioned, S. 707 misses its mark. Because of its vague language, this obligation could easily be fulfilled by family-oriented programming such as "The Cosby Show" or "Family Ties" without the delivery of any material prepared especially for children. While family-oriented programs often hold some merit for youth, many of their themes and plots will not be comprehensible to young children because such programs are primarily intended for general audiences.

Programs that hold the greatest potential to convey their message effectively to child-viewers are those that are uniquely tailored to the child's level of cognitive capabilities. Unfortunately, this type of content has virtually disappeared from the airwaves since the FCC deregulated its children's television policies, with the notable exception of public broadcasting efforts such as "Sesame Street."

An alternative piece of legislation, S. 1215, would resolve this problem by requiring each station to provide programming "specifically designed" to serve the educational needs of both pre-school and school-aged children. Research has established that such programming can have an enormous positive influence on children; at the same time, studies of broadcast practices make it equally clear that children's educational content is not being provided by commercial stations in the absence of any clear regulatory requirement.

S. 1215 also offers other important elements to improve children's television. For example, it would restrict program-length commercials. These programs are little more than vehicles to promote toys and other related products to young children who, because of their limited reasoning abilities, are uniquely susceptible to commercial persuasion. Further, S. 1215 would require stations to identify their children's educational programs to the public in advance of broadcast. Studies reveal that most parents engage in surprisingly little supervision of their children's TV viewing. Many may simply lack the time to review the programs their children watch. By providing information to help parents identify programs with educational value, those who choose to can encourage their children to view these shows.

By the time a child graduates from high school, s/he will have spent more time in front of the television set than in the classroom. Given this huge investment of time and thus exposure to all sorts of program content, it is clear television teaches many lessons to our nation's youth. As former FCC Commissioner Newton Minow once said, "All television is educational; the only question is, what is it teaching?"

This country desperately needs a strong policy to insure that broadcasters, who are trustees utilizing a valuable public resource, make basic efforts to share that resource for the benefit of the nation's children. S. 1215 would accomplish this goal without undue burden to the broadcast industry. Legislation that is less demanding than S. 1215 leaves room for stations to choose their own economic interests over the interests of children. That practice has existed for far too long throughout the history of this influential medium. We urge you to support the adoption of all of the provisions of S. 1215. We are confident this legislation will generate programming improvements to benefit every child in America.

Sincerely,

Dale Kunkel

Dale Kunkel, Ph.D.
Indiana University

Bruce Watkins

Bruce Watkins, Ph.D.
University of Michigan

John Condry

John Condry, Ph.D.
Cornell University

Aimee Dorr

Aimee Dorr, Ph.D.
University of California,
Los Angeles

John Murray

John Murray, Ph.D.
Kansas State University

Ellen Wartella

Ellen Wartella, Ph.D.
University of Illinois

STATEMENT OF DE WITT F. HELM, JR., PRESIDENT, ASSOCIATION OF NATIONAL ADVERTISERS, INC.

The Association of National Advertisers, Inc., (A.N.A.), opposes the proposal to impose arbitrary commercial time limits during children's programming on cable stations.

A.N.A. represents the vast majority of national and regional advertisers in the United States. Our membership includes companies with over 2,000 subsidiaries, divisions and operating units located throughout this country. Our members account for nearly 80% of all national and regional advertising expenditures in the United States.

The role of advertising in relationship to children's programming is an extremely important issue. A.N.A. recognizes that children are a special audience and that certain advertising techniques appropriate for adults may be misunderstood by some young viewers. For these reasons, we are committed fully to eliminating any instance of false or deceptive advertising directed at children. While A.N.A. applauds the interest of this Subcommittee in protecting children, we firmly believe that truthful, nondeceptive advertising does not harm children, and that any proposal predicated on the assumption of the inherent harmfulness of children's advertising is misguided.

In hearings before this Subcommittee on July 12, 1989, A.N.A. opposed the imposition of commercial time restrictions during children's programming on the broadcast networks. We argued that limits on advertising time cannot transform the perceptual capabilities of children. Therefore, proposals to restrict the number of minutes of commercial time per hour of children's programming completely fail to "directly advance" the government's interest in protecting children from false or deceptive advertising. You simply do not rid a barrel of rotten apples by throwing out apples at random. Advertising

time limits that have nothing to do with the content or accuracy of the advertising represent a similarly misguided approach. The U.S. Supreme Court has stated unequivocally that restrictions on advertising must be "narrowly tailored to reasonably fit" the government's regulatory goal. Arbitrary commercial time restrictions fail to meet this test and are therefore unconstitutional. See Central Hudson Gas & Electric Corp v. Public Service Commission of New York, 447 U.S. 557 (1980) and Board of Trustees of the State University of New York v. Fox, 57 U.S.L.W. 5015 (1989).

In earlier testimony, we stated further that the imposition of arbitrary time restrictions on truthful and nondeceptive advertising during children's television would simply establish a framework for further attempts to censor children's advertising and programming without providing any meaningful protection for children. Finally, we asserted that because limits on advertising time would restrict the revenue stream available to support children's programming, commercial time restrictions would likely prove counterproductive to the Subcommittee's goals of increasing the quantity and quality of children's programs.

As a policy matter, A.N.A. believes that it is essential for advertisers and program producers to be given the flexibility to best determine how to balance the entertainment needs of the audience with the financial requirements of good programming. These needs necessarily will vary over time, and the government should not establish arbitrary limits which straightjacket the ability of advertisers and programmers, whether broadcast or cable, to respond effectively to the marketplace and the public they serve. By imposing limits on the number of commercial minutes per hour of children's programming, the Congress would be attempting detrimentally to micromanage the economics of children's television.

Presently there are numerous forces that do and will continue to provide important constraints on the amount of advertising provided during children's programming on cable stations. The first and most obvious constraint is the

amount of time required to assure the effectiveness of the programming itself in attracting viewers. Second is the simple fact that the advertiser's need for an effective environment for advertising will lead to avoidance of a media market in which too much advertising during a program effectively prevents any particular commercial from distinguishing itself. Obviously other factors, including parental supervision, the individual station's own policy with regard to the amount of advertising it will air, and the cost of the advertising in the broadcast media, all contribute to determining the level of advertising during any programming period.

A.N.A.'s objections to arbitrary commercial time limits on the broadcast networks are not unique, and, in fact, also have been strongly enunciated by the U.S. Department of Justice. In a letter dated October 4, 1989 to Senate Commerce Committee Chairman Hollings opposing S. 707, the U.S. Department of Justice concluded that "the policy concerns addressed in this bill ...cannot override the requirements of the First Amendment." (See attached D.O.T. letter, p.6) In the same letter, the U.S. Department of Justice stated that:

> The setting of strict quantitative limits on the amount of advertising necessarily restricts the revenues available for financing the production of programming. This may therefore have the unintended effect of defeating the overriding purpose of this statute by resulting in a net reduction of available children's programming. This is undesirable as a policy matter. (See attached D.O.J. letter, pp. 5-6).

A.N.A. firmly believes that extending commercial time limits during children's programming to cable stations will serve only to compound the constitutional and policy concerns already raised by A.N.A. and the U.S. Department of Justice in response to proposals to limit commercial time during children's programming on the broadcast networks. The attempt by

Congress to subject a wider range of media to advertising time restrictions is particularly objectionable because it represents a further encroachment by government on the First Amendment protections granted truthful and nondeceptive commercial speech.

Two potential streams of funding are available to support children's programming on cable stations: advertising revenues and subscription fees. A limit on advertising time will reduce the amount of advertising revenue available to pay for programming. This in turn is likely, on cable stations that rely both on advertising revenues and subscription fees to pay for programming services, to put increasing pressure on subscription rates. The adverse impact of commercial time limits in relation to programming costs poses the double threat of exerting a negative effect on programming levels by creating an economic disincentive for advertisers, producers and stations to support children's programming.

Proposals to impose commercial time restrictions during children's programming are particularly ill-advised at a time when demographic and economic trends in our society already provide powerful disincentives for program producers to support the children's market. It is estimated that by the year 2000, roughly a decade from now, there will be 1.5 million fewer children aged 0-4 in our society. Similarly, while the age group from 35-64 will witness an unprecedented growth of 20 million persons, the age group from 5-12 will hardly expand. Competition among broadcasters and video options is fractionating this shrinking child audience. At the same time, the average cost to produce a typical half-hour animated children's episode has increased substantially during the past five years. These factors pose a serious and legitimate threat to the relative profitability of children's programming. In view of these demographic and economic trends, A.N.A. believes that the effort to dictate arbitrarily the type and level of

involvement of advertisers, program producers and stations in the area of children's advertising is likely only to reinforce disincentives for children's programming.

We must not redouble our efforts while losing sight of our objectives. Supporters of advertising time restrictions for cable stations argue that they merely are trying to create a "level playing field" in the media marketplace. A.N.A. firmly believes that the controlling issue is not creating a "level playing field" for the media, but creating a productive and constructive playing field which will challenge players in the children's television marketplace to increase the quantity and improve the quality of children's programs. Extending commercial time restrictions to cable stations simply compounds and expands the scope of the harm inherent in this misguided policy. Bad policy is not somehow magically transformed into something constructive and constitutional by being applied across-the-board. Endorsement of advertising time restrictions during children's programming on the broadcast and cable networks will not "level the playing field" but will create new economic mine fields standing in the way of improved children's television. Unfortunately, the ultimate losers will be our children.

A.N.A. thanks the members of the Subcommittee for their thoughtful consideration of our views.

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